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| PRE-APPEAL BRIEF REQUEST FOR REVIEW  |  | Docket Number (Optional)                |                   |
|--|--|---|-------------------|
|  |  | H0005630-1611 (H0005630.65132)          |                   |
| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]<br>on <u>March 9, 2006</u><br>Signature <u>S. Jared Pitts</u><br>Typed or printed name <u>S. Jared Pitts</u> |  | Application Number                      | Filed             |
|  |  | 10/781,098                              | February 17, 2004 |
|  |  | First Named Inventor                    |                   |
|  |  | Brian D. Cull                           |                   |
|  |  | Art Unit                                | Examiner          |
|  |  | 2875                                    | Jacob Y. Choi     |
| Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.   |  |   |                   |
| This request is being filed with a notice of appeal.   |  |   |                   |
| The review is requested for the reason(s) stated on the attached sheet(s).<br>Note: No more than five (5) pages may be provided.   |  |   |                   |
| I am the   |  | <u>S. Jared Pitts</u><br>Signature      |                   |
| <input type="checkbox"/> applicant/inventor.   |  | S. Jared Pitts<br>Typed or printed name |                   |
| <input type="checkbox"/> assignee of record of the entire interest.<br>See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.<br>(Form PTO/SB/96)  |  | (480) 385-5060<br>Telephone number      |                   |
| <input checked="" type="checkbox"/> attorney or agent of record.<br>Registration number <u>38,579</u>  |  | March 9, 2006<br>Date                   |                   |
| <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.<br>Registration number if acting under 37 CFR 1.34 _____  |  |   |                   |
| NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.<br>Submit multiple forms if more than one signature is required, see below.   |  |   |                   |
| <input type="checkbox"/> *Total of _____ forms are submitted.  |  |   |                   |

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MAR 09 2006

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|              |   |                                |                  |      |
|--------------|---|--------------------------------|------------------|------|
| Appl. No.    | : | 10/781,098                     | Confirmation No. | 3371 |
| Applicant    | : | Brian D. Cull                  |                  |      |
| Filed        | : | February 17, 2004              |                  |      |
| TC/A.U.      | : | 2875                           |                  |      |
| Examiner     | : | Jacob Y. Choi                  |                  |      |
| Docket No.   | : | H0005630-1611 (H0005630.65132) |                  |      |
| Customer No. | : | 000128                         |                  |      |

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**ARGUMENTS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR REVIEW****I. Status of Claims**

Claims 15-19, 22-35 and 37 are currently pending in the application, with claims 15, 23 and 31 being independent. All claim amendments have been entered. In general, the claimed invention is directed toward a compact, high-brightness fluorescent lamp. In one embodiment, the lamp comprises a first plurality of legs, a first plurality of curved segments, a second plurality of legs and a second plurality of curved segments. In this embodiment each of the first plurality of curved segments is arranged between a pair of the first plurality of legs and is arranged such that at least three successive legs in the first plurality of legs reside in a first plane. Likewise, the second plurality of legs and a second plurality of curved segments are arranged such that each of the second plurality of curved segments arranged between a pair of the second plurality of legs and the second plurality of legs and the second plurality of curved segments are arranged such that at least three successive legs in the second plurality of legs reside in a second plane different from said first plane. See FIGS 1-4 of applicants' specification and claims 15-22 for examples of this embodiment.

In a second embodiment, the lamp comprises a first plurality of legs in a first plane, a second plurality of legs in a second plane, and a plurality of curved segments, each the

plurality of curved segments arranged between a leg in the first plurality of legs and a leg in the second plurality of legs. In this embodiment the first plurality of legs, the second plurality of legs, and the plurality of curved segments are arranged such that successive legs alternate between the first plane and the second plane and the first and second plurality of legs are spaced such that they provide a continuous lamp surface on a first side of the fluorescent lamp. See FIGS. 6-13 of applicants' specification and applicants' claims 23-30 as examples of this embodiment.

In a third embodiment, the lamp comprises a first plurality of legs, a first plurality of curved segments, a second plurality of legs, and a second plurality of curved segments. In this embodiment the first plurality of legs and the first plurality of curved segments are arranged such that at least three successive legs in the plurality of legs reside in a first curve. Likewise, the second plurality of legs and the second plurality of curved segments are arranged such that at least three successive legs in the second plurality of legs reside in a second curve different from said first curve. See FIGS. 14-17 of applicants' specification and applicants' claims 14-17 as examples of this embodiment.

## II. Rejections under 35 U.S.C. § 102

In the final office action, dated December 9, 2005, claims 15-19, 22-35 and 37 were rejected under 35 U.S.C. § 102 as allegedly being anticipated by U.S. Patent No. 5,775,801 to Shaffer, hereinafter Shaffer. The Examiner stated that Shaffer disclosed the claimed invention, citing FIGS. 3A and 3B of Shaffer.

In response to this rejection, applicants argued that applicants' claims are patentably distinct over the cited Shaffer reference. Applicants noted that the light sources illustrated in FIG. 3B of Shaffer were two separate neon light sources, one behind the other. In contrast, the claimed invention is a "tubular fluorescent lamp". Furthermore, applicants argued that the limitations of the claims recite the legs and curved segments arranged together as part of a single lamp. Thus, applicants submitted that two separate and distinct neon light sources cannot satisfy the claimed limitations, and that claims 15-19, 22-35 and 37 were thus patentably distinct over the cited Shaffer reference.

In response to these arguments, the Examiner issued an advisory action dated February 15, 2006. In the advisory action the Examiner stated that the recitation of a “tubular fluorescent lamp” had not been given patentable weight because it was recited in the preamble. Additionally, the Examiner argued that the features in which applicant relied, *i.e.*, “the legs and curved segments arranged together as part of a single lamp” were not recited in the claims. Thus, the Examiner maintained the final rejection.

### III. Arguments

Applicants submit that the claims are patentably distinct over the cited Shaffer reference. As discussed above, the portion of the Shaffer reference cited by the Examiner clearly discloses **two separate** neon light sources, one behind the other. See FIG. 3B of Shaffer, and see column 4, line 56-58 of Shaffer, which describes FIG. 3B as “an illustration of the relative alignment of two neon light sources 119, 121.” Applicants submit that two separate lamps cannot meet the claimed limitation of a “fluorescent lamp”.

First, with regard to the Examiner’s statement that the “tubular fluorescent lamp” has not been given patentable weight because it was recited in the preamble—applicants note that the term was also referred to in the body of the independent claims. For example, independent claim 15 refers to “the florescent lamp” in line 13. Likewise, independent claims 23 and 31 refer to “the fluorescent lamp” in lines 9 and 13 respectively. Applicants submit that because the term is referenced in the body of the claims, the term “the fluorescent lamp” must be given proper patentable weight.

Second, with regard to the Examiner’s statement that “the legs and curved segments arranged together as part of a single lamp” are not recited in the claims, applicants submit that the limitations of the claim taken together in their entirety clearly define legs and curved segments that are part of single lamp. For example, independent claim 15 recites a “tubular fluorescent lamp” comprising “a first plurality of legs and a first plurality of curved segments” and “a second plurality of legs and a second plurality of curved segments”. There is no reasonable interpretation of claim 15 except one in which the first plurality of legs, the first plurality of curved segments, the second plurality of legs, and the second plurality of curved segments all are part of a single fluorescent lamp. Specifically, these features are recited as

being part of the “fluorescent lamp”, where “the first plurality of legs is interdigitated with the second plurality of legs to create a continuous lamp surface along a first side of the fluorescent lamp”. See lines 12 and 13 of claim 15.

In contrast the portion of the Shaffer reference cited by the Examiner clearly discloses two separate neon light sources, one behind the other. See FIG. 3B of Shaffer, and see column 4, line 56-58 of Shaffer, which describes FIG. 3B as “an illustration of the relative alignment of two neon light sources 119, 121.” Thus, the cited “legs” and “curved segments” of the Shaffer reference are not all part of the same lamp, and cannot meet the claimed limitations. Thus, applicants submit that independent claim 15 is patentably distinct over the cited reference. Furthermore, as dependent claims 16, 17, 18, 19 and 22 depend from, and include all the limitations of independent claim 15, they are also patentably distinct.

With regard to independent claim 23, applicants submit that independent claim 23 is also patentably distinct over Shaffer. Specifically, independent claim 23 recites that the fluorescent lamp includes plurality legs arranged in a first plane and a second plane, where successive legs alternate between the first plane and the second plane, and wherein “the first plane is substantially parallel to the second plane, and wherein the first and second plurality of legs are spaced to provide a continuous lamp surface along a first side of the fluorescent lamp, and wherein the first side is substantially parallel with the first plane”. Applicants submit that Shaffer fails to disclose such a lamp structure.

Specifically, while Shaffer discloses two separate neon light sources, there is not a single lamp with legs in a first and second plane, where successive legs alternate between planes and are spaced “to create a continuous lamp surface on the first side of the fluorescent lamp”. Applicants further note that even if the two lamps in Shaffer were considered to be one lamp, they would still not meet the claimed limitations. Specifically, because all the legs in one lamp 119 reside in one plane, and because the legs in the second lamp 121 reside in another plane, there is no lamp where “successive legs alternate between the first plane and the second plane”. Applicants note that as the term was used in the specification, “successive legs” refer to the next leg in a lamp. See FIG. 6-9 and paragraph [0050], which illustrate and describe a lamp with “successive legs” that alternate between a first plane and a second

plane". Because Shaffer does not disclose a lamp where "successive legs alternate between the first plane and the second plane" independent claim 23 is patentably distinct over the cited Shaffer reference. Furthermore, as dependent claims 24, 25, 26, 27, 28, 29 and 30 depend from, and include all the limitations of independent claim 23, they are also patentably distinct.

With regard to independent claim 31, applicants submit that independent claim 31 is patentably distinct over Shaffer for similar reasons as given above with respect to independent claim 15. Furthermore, Shaffer fails to show a first plurality of legs where at least three successive legs in the first plurality of legs **reside in a first curve** and a second plurality of legs where at least three successive legs in the second plurality of legs **reside in a second curve different** from said first curve, where the first and second curves are parallel. Applicants note that both the lamps in Shaffer are flat. Because the two lamps 119 and 121 in Shaffer are both "flat", even if the two lamps in Shaffer were considered to be one lamp, they would still not meet the claimed limitations. Thus, applicants submit that amended independent claim 31 is patentably distinct over the cited references. Furthermore, as dependent claims 32, 33, 34, 35 and 37 depend from, and include all the limitations of independent claim 31, they are also submitted to be patentably distinct.

#### IV. Conclusion

In view of the foregoing, it is submitted that the Examiner's reliance upon Shaffer alone does not support rejection of claims 15-19, 22-35 and 37 and that the above-noted rejections should be withdrawn. Hence, Applicants request that the reviewing panel find that the present application is in condition for allowance.

Respectfully submitted,  
INGRASSIA FISHER & LORENZ

Dated: March 9, 2006

By: 

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